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In the Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-752

STANLEY KARL THOMAS,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the Court of Appeals, Ninth Judicial District of Ohio.

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STANLEY KARL THOMAS,

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STATE OF OHIO,

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PETITION FOR A WRIT OF CERTIORARI
To the Court of Appeals, Ninth Judicial District of Ohio.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioner, Stanley Karl Thomas, respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeals, Ninth Judicial District of Ohio, made and entered by said Court on the 20th day of January, 1971, a copy of which is attached hereto as Appendix C.

The Ohio Supreme Court refused further appellate review on September 15, 1971, thus making the judgment of the Court of Appeals final on that date. A copy of the Order dismissing the appeal and a copy of the Order overruling motion for leave to appeal by the Ohio Supreme Court in Case No. 71-335 is attached hereto as Appendix A.

OPINIONS OF THE COURTS BELOW.

The opinions of the lower courts were not reported. Petitioner's case was heard first in the Court of Common Pleas of Lorain County, Ohio, Case No. 15050. The case was submitted to a panel of three judges and the Petitioner was found guilty of second degree murder by a 2 to 1 majority of said panel.

Petitioner appealed to the Court of Appeals for Lorain County in Case No. 1911, but the decision of the Court of Common Pleas was affirmed. A copy of the opinion of the Ninth Judicial District Court of Appeals is attached hereto as Appendix B.

Motion for leave to appeal in the Supreme Court of Ohio was denied without this Petitioner being afforded an oral hearing.

JURISDICTION.

The judgment of affirmance by the Supreme Court of Ohio was entered September 15, 1971; hence, the Petition herein being filed within ninety days of September 15, 1971, the jurisdiction of this Court is invoked under 28 U.S.C. paragraph 1257(3) since "rights, privileges and immunities" under the United States Constitution are claimed to have been violated.

QUESTIONS PRESENTED.

(1) Was the petitioner denied due process in violation of his constitutional rights when his bail was revoked without notice and without hearing? In other words, once bail is set, can it be revoked without cause, without notice and without hearing?

(2) Was the Petitioner denied the right of trial by an impartial trier of fact when the majority of said panel of judges revoked the bail of the Petitioner without cause, without notice and without hearing?

(3) Was the Petitioner denied the right of trial by an impartial trier of fact and due process of law in violation of his constitutional rights by the insistence of the trial court to commit said Petitioner to Lima State Hospital for the Criminally Insane for observation on the date of trial when there was no claim that said Petitioner was then and there under mental disability, and any such possible claim was expressly waived by the Petitioner and his Counsel?

CONSTITUTIONAL AND STATUTORY PROVISIONS WHICH THE CASE INVOLVES.

Constitution of the United States:

Amendment XIV, Section 1, Clause 2:

". . . nor shall any State deprive any person of life, liberty or property without due process of law . . ."

Amendment VI:

"In all criminal prosecutions, the accused shall be entitled to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, . . ."

Constitution of the State of Ohio:

Article I, Section 9:

"All persons shall be bailable by sufficient surety, except for capital offenses *where the proof is evident or the presumption great. . . .*" (Emphasis supplied)

Ohio Revised Code Section 2945.40:

"In any case in which insanity is set up as a defense, or in which present insanity of the accused is under investigation by a court or jury, the court may commit the defendant to a local hospital for the mentally ill, or the Lima state hospital, where the defendant shall remain under observation for such time as the court directs not exceeding one month. The court may in such case appoint one or more, but not more than three, disinterested qualified physicians, specialists in mental diseases, to investigate and examine into the mental condition of the defendant and testify as experts at his trial or other hearing. In case of such appointment the court shall forthwith notify counsel of the names and addresses of the persons so appointed. The expert witnesses appointed by the court may be called by the court and shall be subject to examination and cross-examination by the prosecuting attorney and counsel for the defendant. The appointment of such expert witnesses, and their testifying as witnesses, shall not preclude the prosecuting attorney or defendant from calling other witnesses to testify on the subject of insanity. Such persons so appointed may be required by the court to prepare a written statement under oath, concerning the mental condition of the defendant, and file the same in the case. Such report shall not be read as evidence, except that it may be used by either counsel on the cross-examination of the witness who signed the same. The court shall instruct the jury in case of such appointment and testimony of such expert witnesses, that the credibility

of such witnesses, in common with all other witnesses in the case, is for the exclusive consideration and determination of the jury. Persons so appointed shall be paid a reasonable fee for their examination or service and their reasonable expenses, the amount whereof shall be certified by the judge or court making the appointment and paid by the county."

STATEMENT OF THE CASE.

This case comes before this Honorable Court upon an appeal from the Court of Appeals of the Ninth Judicial District, Lorain County, Ohio, which affirmed the conviction of the Petitioner of murder in the second degree. The Ohio Supreme Court refused leave to appeal, without oral hearing, claiming no substantial constitutional question existed.

MANNER IN WHICH THE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS RAISED.

The improper conduct of the trial Court claimed by the Petitioner was expressly raised on appeal to the Ninth District Court of Appeals of Ohio. Though a written opinion was prepared by the Court of Appeals (Appendix B), the specific questions herein presented were neither mentioned nor ruled upon. The Supreme Court of Ohio had the same matters raised, but refused to grant the Petitioner leave to appeal or even the opportunity to be heard orally on the matter. Of course, an extremely delicate question presented itself at the actual trial stage and preceding said trial, as the trier of fact and the presiding tribunal was the same entity—the panel of three Judges. The question of bias, denial of due process and the resulting deprivation of a fair trial was not completely evident and conclusive until the trial was completed.

STATEMENT OF FACTS.

Petitioner was originally indicted for murder in the first degree arising out of an incident on October 31, 1969, at the Neighborhood Center in Elyria, Ohio, where it was alleged that Stanley Karl Thomas, the Petitioner, purposely, in deliberate and premeditated malice killed Terry Lee White by inflicting 17 stab wounds. On December 3, 1969, the Petitioner was arraigned and, in Court with Counsel, waived reading of the indictments and entered a plea of not guilty. At a full and complete hearing on Petitioner's Motion for the setting of bail held December 29, 1969, said Petitioner was granted bail for appearance in the amount of Fifteen Thousand ($15,000.00) Dollars. Subsequent thereto, on January 20, 1970, the Petitioner, in open Court, waived a jury trial and requested trial by a three Judge Court and the case was set for trial on Monday, March 2, 1970. On said date and after the case was called for trial before a three Judge panel, the Petitioner, in Court with Counsel, entered an additional plea of not guilty by reason of insanity. Over objection of the Petitioner and his Counsel, the Petitioner was ordered transmitted to the Lima State Hospital for the Criminally Insane for examination for a period not to exceed one month pursuant to Ohio Revised Code Section 2945.40. This order was made though Petitioner and his Counsel specifically maintained that the Petitioner was presently sane. After the trial Court ruled that a determination was to be made as to Petitioner's present sanity and ability to aid in his defense, the request of the Petitioner and his Counsel for the appointment of private psychiatrists to make such determination was denied. On April 20, 1970, the Petitioner, in open Court with Counsel, waived the ten (10) day notice required by law for a hearing upon the Lima State Hospital report of the examination. There being no objection to said report and upon the evidence

submitted, the Petitioner was found to be sane. On April 22, 1970, the Court ordered Petitioner's bail canceled without cause, notice or hearing and the Petitioner was ordered committed to the Lorain County Jail without bail pending trial.

Thereafter, trial was begun on May 11, 1970 before a three Judge panel and consumed less than 4 days of actual trial time, during which, in excess of 13 witnesses were called. The evidence presented by all witnesses presented a confused and divergent picture of the actual incidents composing the alleged murder of Terry Lee White. The State attempted to show that the Petitioner approached the decedent, Terry Lee White, in a parking lot filled with approximately 100 to 200 high school students following a football game and made certain motions indicating that he was unarmed and, suddenly, without warning, pulled a knife and stabbed the decedent 17 times. The testimony of numerous defense witnesses showed that the decedent first struck the Petitioner, who has sight from only one eye, a blow with a whiskey bottle on his forehead; whereupon, the Petitioner reacted by pulling a knife from his pocket and stabbing the decedent 1 time. The Petitioner further testified that, after the first blow was struck and he heard gunshots, he does not recall striking the decedent the remaining 16 times; that this quite probably was due to his tremendous fear of guns, as the sight of his one eye was lost by an accidental gunshot. The three Judge panel reached a unanimous verdict finding the Petitioner not guilty of murder in the first degree, but found the Petitioner guilty of murder in the second degree with one Judge dissenting. Petitioner was thereafter sentenced to the Ohio State Penitentiary for life.

Appeal was subsequently filed with the Court of Appeals, Ninth Judicial District, Lorain County, Ohio, Case No. 1911. The Court of Appeals for said district filed an

opinion, decided on January 20, 1971, stating that upon examination of the record in light of the several claimed errors, they find nothing prejudicial to the substantial rights of the Petitioner and the judgment must be affirmed, though said Court of Appeals was completely mute as to the three questions before this tribunal. Whereupon, a Notice of Appeal was filed with the Supreme Court of the State of Ohio who refused leave to appeal without oral hearing; thus, this present Petition for writ of certiorari with the United States Supreme Court.

ARGUMENTS RELIED ON FOR ALLOWANCE OF THE WRIT.

It is unconscionable to believe that Petitioner's constitutional rights were not violated during his trial and pre-trial procedures as well as during his post-conviction remedies of appeal. The Court of Appeals states that they found no errors prejudicial to the substantial rights of the Petitioner, though it completely side-stepped and didn't even mention the fact that the trial Court revoked Petitioner's bail without cause, without notice and without hearing. What clearer evidence of due process denial can exist? What clearer evidence of bias on the part of the panel of Judges can exist?

It is wholly conceivable that, either consciously or subconsciously, a three Judge panel, comprising our Ninth District Court of Appeals, was reluctant to find fault with the determination of another three Judge panel.

It must be here remembered that Article I, Section 9 of the Constitution of the State of Ohio provides that:

> "All persons shall be bailable by sufficient surety, except for capital offenses where the proof is evident or the presumption great."

Upon full hearing, and after presentation of various and sundry witnesses and other evidence, the Judge presiding in this case admitted the Petitioner to bail *by finding that the proof was not evident nor the presumption as to his guilt of the first degree murder charge.* The Constitution of the United States also maintains a similar position.

Once the Petitioner was afforded the rights granted him by the Constitution and bail was set, it became a denial of due process to revoke said bail without cause, without notice and without hearing. The Court held in the

case of *State, ex rel. Reams vs. Stuart,* 127 Ohio State 314, that the Court of Common Pleas has jurisdiction to hear and determine before trial of the merits the application of a person indicted for murder in the first degree to be admitted to bail. It is, therefore, within the discretion of the Court of Common Pleas to admit a person indicted for murder in the first degree to bail upon his showing that the proof is no evident nor the presumption of his guilt not great. Release on bond is a concomitant of the presumption of innocence. The 14th Amendment to the Constitution of the United States provides that no state shall deny any person of liberty without due process of law. Due process requires a fair opportunity to be heard and an open hearing to protect the constitutional rights the Petitioner has been granted. Though we find no case in point in Ohio, common sense dictates that, once a determination is made that a Defendant should be granted bail, such decision cannot be revoked at the whim, pleasure or displeasure of the Judges selected to try the case. In the instant matter, the two members of the three Judge panel who found the Petitioner guilty of second degree murder, were the same Judges who signed the order dated April 22, 1970 which read as follows:

> "Defendant's application for continuance of bond is denied; bond ordered cancelled and defendant ordered committed to the Lorain County Jail without bond pending trial. Trial to be had before panel of three judges, namely Hon. Paul J. Mikus; Hon. John D. Pincura, and Hon. Henry P. Webber, set for Monday, May 11, 1970, at 10 a.m.
>
> (s) JOHN D. PINCURA
> (s) PAUL J. MIKUS"

This order was entered though there was no application by this Petitioner for continuance of bond, as there was no need for such an application. Bond was afforded him at the hearing on December 29, 1969 as previously mentioned. The reasons for the action of Judges John D. Pincura and Paul J. Mikus, who composed the majority of the trier of fact, may never be learned. The Petitioner and his Counsel are unaware of whatever the reason might have been as no notice was given or hearing set on revocation of the bond. As a matter of fact, the Petitioner was present at all times required of him and no questionable act of any nature or description was committed by said Petitioner to in any way rationalize or justify the revocation of bond. Bias of Judges Pincura and Mikus is clearly evidenced, as we reflect, thus depriving the Petitioner of a fair trial. Surely, denial of due process is also clearly evidenced by seemingly senseless acts of the trial Court. However, if it was not a senseless act—if there was some reason for considering revoking bail—should not the Petitioner and his Counsel be apprised? Should not the Petitioner and his Counsel be given a hearing in open Court on such issue?

Though not clearly matters involving constitutional questions, there were many other indications of bias on the part of Judges Pincura and Mikus during trial. However, one further indication that does involve a constitutional question is the act of the judicial panel, which it must be remembered was the trier of fact in this case, in sending the Petitioner to Lima State Hospital for the Criminally Insane to determine the Petitioner's sanity at the time of trial on March 2, 1970. This commitment and delay of trial was uncalled for either legally or practically. The Petitioner and his Counsel in open Court attested to the fact of Petitioner's sanity on the date in question,

March 2, 1970. The provisions of Ohio Revised Code Section 2945.40 are properly invoked when a question of Defendant's capacity to stand trial is involved. Neither the prosecutor nor the Petitioner requested such a commitment, and the action of the trial Court not only further evidenced bias against the Petitioner, but also deprived him of a speedy trial; thus, a further indication of due process denial.

The case of *State vs. Beard,* 63 Ohio App. 483, indicates that the provisions of said statute are permissive and not mandatory. There was no possibility that the Court could be abusing its discretion if no commitment were made. Conversely, we believe the Court showed bias and abused its discretion by forcing the aforementioned commitment over objection of the Petitioner and his Counsel, there being no present indication he was mentally ill. The Court had the alternative of using local disinterested, qualified physicians and leaving the Petitioner in Lorain County, Ohio where he might continue preparation of his defense. Even this alternative provision, requested by Counsel once it was clear that the Court was not going to proceed with trial on March 2, 1970, was denied. The commitment to Lima State Hospital delayed the trial of the case for over two months. Furthermore, when the Petitioner was returned to Lorain County with a "mental clean bill of health," he was retained in custody and never again released on the bail that had been previously ordered after full hearing.

A question arises as to the duty of a three Judge panel and the rights afforded the Defendant in a case of this type as compared with duties and rights when said Defendant has a trial by jury. We believe the Petitioner should have no lesser consideration when waiving the jury and conferring jurisdiction on the three Judge panel

to determine his fate. The very least the Petitioner might have expected was an unbiased tribunal making its determination devoid of passion or prejudice.

Even if the issue commonly known as temporary insanity were rejected by the trial Court, the total evidence presented would have as logically supported a finding of manslaughter as one of second degree murder.

Some of what we say here must have been concurred in by the one Judge who dissented in the verdict, the same Judge who took no part in the order revoking the bond of the Petitioner without cause, without notice and without hearing.

The Court of Appeals in its opinion conceded:

> ". . . it is true that there is a great conflict in the testimony . . ."

CONCLUSION.

By reason of the fact that a three Judge panel determines the factual situation as well as the applicable law and even the imposition of any penalty that might be imposed, evidence of bias in any degree whatever cannot be tolerated. Such evidence would clearly amount to a denial of due process and the right to a fair and impartial trial.

Petitioner earnestly urges that this Court grant certiorari to review his case.

Respectfully submitted,

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614 E.S.T. Bldg.,
Elyria, Ohio 44035,
Attorneys for Petitioner.

APPENDIX A.

ORDERS OF THE SUPREME COURT OF THE STATE OF OHIO.

(Entered September 15, 1971.)

No. 71-335.

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO, CITY OF COLUMBUS,

STATE OF OHIO,
Appellee,

vs.

STANLEY KARL THOMAS,
Appellant.

ORDER DISMISSING APPEAL.

This cause, here on appeal as of right from the Court of Appeals for Lorain County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Lorain County for entry.

ORDER OVERRULING MOTION FOR LEAVE TO APPEAL.

It is ordered by the Court that this Motion is overruled.

APPENDIX B.

OPINION OF THE COURT OF APPEALS.

(Decided January 20, 1971.)

Case No. 1911.

IN THE COURT OF APPEALS

NINTH JUDICIAL DISTRICT OF OHIO

COUNTY OF LORAIN

STATE OF OHIO,
Plaintiff-Appellee,

vs.

STANLEY KARL THOMAS,
Defendant-Appellant.

An appeal on questions of law has been lodged in this Court from a judgment of guilty of murder in the second degree, entered by a panel of three judges sitting to determine the facts in place of a jury. The jury was duly waived, in writing, by the Defendant (appellant).

It is the claim of Stanley Karl Thomas that:

1. "The Court erred in refusing to admit testimony as to the character of the decedent. . . .

2. "The trial court committed error by applying the rule set forth in Clark v. State, 12 O. 483 (commonly referred to as the M'Naghten Rule) in determining the question of legal sanity.

3. "The facts and circumstances surrounding the death of Terry Lee White are reasonably reconcilable on a theory other than murder, thus inconsistent with the verdict as rendered.

4. "The conduct of the trial court and/or the chief Judge, Paul J. Mikus, before and during trial was improper and violated the defendant's constitutional rights to a fair trial.

5. "The court erred in failing to grant the motions of the defendant at the conclusion of the state's case.

6. "The verdict was against the manifest weight of the evidence."

The record herein shows a very typical situation in a case of this nature. While it is true that there is a great conflict in testimony, there is no question but that Terry White met his death at the hands of Stanley Karl Thomas. That death was caused by numerous stab wounds inflicted upon White by Thomas on the grounds of a place in Elyria, Lorain County, Ohio, known as Neighborhood Center. Thomas, White and others, had attended a football game on the night of October 31, 1969. Both White and Thomas were very young married men. Thomas had lost his vision in the left eye, but otherwise he was in good health; he was six feet tall and weighed 170 pounds. Conflict arose between the parties because of a statement that the wife of Thomas had gone out with White. At the Neighborhood Center, after the football game, Thomas, who had borrowed a knife from a friend that night, approached White. A fight ensued; whether White struck Thomas with a whiskey bottle before Thomas struck White in the thigh, or whether it was "simultaneous," as one witness said, was a matter for the trier of the facts to conclude. Many stab wounds, with the result of death did occur. From this evidence, the trier of the facts could rightly conclude that Thomas was the aggressor.

We believe, from a reading of this record, that the case was well tried by the court and the lawyers. In reading typewritten testimony, it is impossible to get the inflection of voices, stresses of syllables and enunciation of words. We find no prejudice evidenced against anyone, or by anyone, in this record.

There was comment from the court, during an interruption of the argument by Mr. Zagrans, that indicated an unfamiliarity with the clarification of the Ohio rule on insanity as a defense, set out in the case of *State v. Staten*, 18 Ohio St. 2d 13, but the trial court then indicated that it would have the testimony transcribed for the purpose of considering that testimony in the light of the rule, as clarified. We are certain that the Court considered the testimony of Doctor Corzo, who, at page 360 of the record, indicated that the defendant would "most likely not"—"have the ability to refrain from performing these acts" (stabbing).

We have, with care, examined the record in the light of the several claims of error, and find none prejudicial to the substantial rights of the defendant (appellant). The judgment must be affirmed.

Judgment affirmed.

APPENDIX C.

JOURNAL ENTRY OF THE COURT OF APPEALS:

Case No. 1911.

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT OF OHIO
COUNTY OF LORAIN

STATE OF OHIO,
Plaintiff-Appellee,

vs.

STANLEY KARL THOMAS,
Defendant-Appellant.

This cause came on to be heard on appeal on questions of law by the said Stanley Karl Thomas, Appellant herein, the original papers or transcripts thereof, and a duly certified Transcript of the Docket and Journal Entries of the Court of Common Pleas of Lorain County, Ohio, filed therewith in the said case, wherein the State of Ohio was Plaintiff and Stanley Karl Thomas was Defendant, and was argued by counsel, and submitted to the Court.

Upon consideration whereof the Court finds that in the record and proceedings aforesaid there is no error prejudicial to appellant manifest upon the face of the Record of said Court of Common Pleas, and the judgment of said Court of Common Pleas is affirmed.

It is ordered that the said Appellant pay the costs of this Proceeding taxed at $_____, and in default thereof that execution issue therefor.

The Court finds there was reasonable cause for this appeal.

It is further ordered that a Special Mandate issue out of this Court directing the Court of Common Pleas of Lorain County, Ohio, to carry this Judgment and order for costs into execution.

APPENDIX D.

OPINION OF THE COURT OF COMMON PLEAS.

Case No. 15050.

IN THE COURT OF COMMON PLEAS

STATE OF OHIO, LORAIN COUNTY, SS

STATE OF OHIO,
Plaintiff,

vs.

STANLEY KARL THOMAS,
Defendant.

This day again came the Prosecuting Attorney on behalf of the State of Ohio and the Defendant, Stanley Karl Thomas, in his own proper person being in open Court with his counsel, and the trial proceeded. The panel of three judges resumed deliberation after retiring to their room.

Afterwards came said judges into open Court with their Verdict in writing signed by each Judge, concurring and dissenting and saying:

We, the undersigned Trial Judges, find the Defendant, Stanley Karl Thomas, not guilty of Murder in the First Degree, as he stands charged in the indictment, but find the Defendant guilty of the included offense of Second Degree Murder, in violation of Section 2901.05 of the Ohio Revised Code of Ohio.

Thereupon the Defendant being inquired of if he hath anything to say why judgment should not be pronounced against him, and showing no good and sufficient cause why judgment should not be pronounced, it is the JUDGMENT OF THE LAW AND THE SENTENCE OF THE COURT that the Defendant, Stanley Karl Thomas, be, and he

hereby is, sentenced to be again taken into the Jail of Lorain County, Elyria, Ohio; thence within five (5) days to the Penitentiary of the State of Ohio, Columbus, Ohio, there to serve a life imprisonment according to law for violation of ORC 2901.05, and to pay the costs of this prosecution for which execution is awarded.

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STATE OF OHIO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, NINTH JUDICIAL DISTRICT OF OHIO.

BRIEF FOR RESPONDENT IN OPPOSITION.

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BRIEF FOR RESPONDENT IN OPPOSITION.

OPINIONS OF THE COURTS BELOW.

The opinions of the lower courts were not reported. Petitioner's case was heard first in the Court of Common Pleas of Lorain Couhty, Ohio, Case No. 15050. The case was submitted to a panel of three judges and the Petitioner was found guilty of second degree murder by a 2 to 1 majority of said panel.

Petitioner appealed to the Court of Appeals for Lorain County in Case No. 1911, but the decision of the Court of Common Pleas was affirmed. A copy of the opinion of the Ninth Judicial District Court of Appeals is attached hereto as Appendix B.

Motion for leave to appeal in the Supreme Court of Ohio was denied without this Petitioner being afforded an oral hearing.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED.

(1) Was the petitioner denied due process in violation of his constitutional rights when his bail was revoked without notice and without hearing? In other words, once bail is set, can it be revoked without cause, without notice and without hearing?

(2) Was the Petitioner denied the right of trial by an impartial trier of fact when the majority of said panel of judges revoked the bail of the Petitioner without cause, without notice and without hearing?

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CONSTITUTIONAL AND STATUTORY PROVISIONS WHICH THE CASE INVOLVES.

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court may be called by the court and shall be subject to examination and cross-examination by the prosecuting attorney and counsel for the defendant. The appointment of such expert witnesses, and their testifying as witnesses, shall not preclude the prosecuting attorney or defendant from calling other witnesses to testify on the subject of insanity. Such persons so appointed may be required by the court to prepare a written statement under oath, concerning the mental condition of the defendant, and file the same in the case. Such report shall not be read as evidence, except that it may be used by either counsel on the cross-examination of the witness who signed the same. The court shall instruct the jury in case of such appointment and testimony of such expert witnesses, that the credibility of such witnesses, in common with all other witnesses in the case, is for the exclusive consideration and determination of the jury. Persons so appointed shall be paid a reasonable fee for their examination or service and their reasonable expenses, the amount whereof shall be certified by the judge of court making the appointment and paid by the county."

STATEMENT OF THE CASE.

Defendant was originally indicted for Murder in the First Degree arising out of an incident on October 31, 1969, at the Neighborhood Center at 17th Street and Oberlin Road, Elyria, Ohio, where it was alleged that Stanley Karl Thomas, the Defendant-Appellant, purposely, in deliberate and premeditated malice killed Terry Lee White. On December 3, 1969, the Defendant was arraigned and in Court with counsel; waived reading of the Indictment, and entered a plea of not guilty. At a hearing on Motion for Bond held December 29, 1969, Defendant was granted bond for appearance in the amount of Fifteen Thousand Dollars ($15,000.00). Subsequent thereto, on January 20, 1970, the Defendant, in open Court, waived a Jury Trial and requested Trial by a three Judge Court; and the case was set for trial on Monday, March 2, 1970. On said date, and after the case being called for trial before a three Judge Panel, Defendant in Court with Counsel entered an additional plea of not guilty by reason of insanity, and requested appointment of private psychiatrists to determine his present sanity and ability to aid in his defense; Defendant's request for private psychiatrists was denied, and the Defendant was ordered to be admitted to Lima State Hospital for examination for a period not to exceed one (1) month pursuant to Ohio Revised Code Section 2945.40. On April 20, 1970, the Defendant in open Court with Counsel waived the ten (10) day notice required by law for a hearing upon the report of the examination by Lima State Hospital. There being no objection to said report, and upon the evidence submitted, the Defendant was found to be sane. A ruling on Application for continuance of bond was deferred, and the Defendant was committed to custody of the Sheriff pending a ruling on the bond. Bond was

ordered cancelled and Defendant was ordered committed to Lorain County Jail without bond pending trial. Thereafter, trial was held before a three Judge Panel consuming four (4) days of actual trial time, during which, in excess of thirteen (13) witnesses were called.

On October 31, 1969, at the Elyria Neighborhood House in Elyria, Ohio, at approximately 10:00 p.m., the Decedent, Terry Lee White, was stabbed by the Defendant sixteen times. The decedent had arrived at the Neighborhood House shortly before 10:00 p.m. from a football game. The Defendant arrived moments later and approached the decedent in the parking lot. A conversation ensued, whereupon, the Defendant, wearing a three-quarter length coat, opened said coat in a manner suggesting that he was unarmed. Suddenly, the Defendant began striking the decedent with what later proved to be a hunting knife inflicting sixteen major stab wounds. The three Judge Panel reached a verdict finding the Defendant not guilty of Murder in the First Degree, but found the Defendant guilty of Murder in the Second Degree with one (1) Judge dissenting. Defendant was thereafter sentenced to the Ohio State Penitentiary for life.

Appeal was subsequently filed with the Court of Appeals, Ninth Judicial District, Lorain County, Ohio, Case No. 1911. The Court of Appeals for said District filed an Opinion decided on January 20, 1971, stating that upon examination of the record in light of the several claimed errors, they find nothing prejudicial to the substantial rights of the Defendant, and the Judgment must be affirmed; whereupon, a Notice of Appeal was filed with the Ohio State Supreme Court to be considered as a Motion for Leave to Appeal a felony case. The Supreme Court of the State of Ohio denied Petitioner leave to appeal without oral hearing.

ARGUMENTS RELIED ON FOR DENIAL OF THE WRIT.

The allowance of bail where one is indicted for a capital offense is a question addressed to the sound legal discretion of the Court. It is true that the Petitioner was granted bail after a full hearing on the merits on December 29, 1969. Subsequently, a plea of not guilty by reason of insanity was entered on behalf of the Petitioner. However, it is of particular significance to note that Petitioner's bond was revoked two days after a hearing on the Petitioner's report from the Lima State Hospital for the Criminally Insane. It seems quite logical that since the allowance of bail in a capital offense is within the sound discretion of the Court, that the revocation of same bail is within the sound discretion of the Court. To presume that the Court abused its sound discretion is to indulge the Petitioner in pure conjecture and speculation insofar as the revocation of bail was effected only after the Petitioner's plea of not guilty by reason of insanity, and the report from the Lima State Hospital for the Criminally Insane.

It should also be mentioned that the Petitioner did not submit an Application for continuance of his bond nor filed a Writ of Habeas Corpus requesting the continuance of his bond.

The respondent is bewildered and perplexed as to how this Pretrial procedure is a denial of the Petitioner's right to fair and impartial trial. The Petitioner attempts to equate the revocation of the accused's bond with biasness on the part of the Court hearing the trial of the Petitioner. This equation is purely a bold assertion of presumptuous and speculative argument which is not documented in Petitioner's Memorandum.

On December 3, 1969, the Petitioner was arraigned and entered a plea of not guilty. On March 2, 1970, on the scheduled trial date, the Petitioner entered a plea of

not guilty by reason of insanity. In accordance with Ohio Revised Code Section 2945.40, "In any case in which insanity is set up as a defense . . . the court may commit the defendant to . . . , or the Lima State Hospital . . .", the Petitioner was committed to said State hospital. As pointed out in Petitioner's Brief, the provisions of said statute are permissive and hence the Court did not abuse its discretion by committing Petitioner to said Hospital.

There being no abuse of the Court's discretion in committing Petitioner to the Lima State Hospital, it would be indeed a strained and dubious conclusion to equate the Court's act and decision with biasness and an impartial trial as the Petitioner so asserts.

The questions raised herein were reviewed by Appellate courts of the State of Ohio and found to be without merit. The record does not reflect any biasness on the part of the Court, in fact the record clearly repudiates the tainted inferences asserted by the Petitioner.

The propositions of law as assigned by the Petitioner independently or cumulatively do not set forth a substantial constitutional question. The revocation of Petitioner's bond prior to trial in no way denied the Petitioner a fair trial. The language of Section 2945.40 is discretionary with the Court, as it relates to the Disposition of a Defendant upon a plea of not guilty by reason of insanity. Neither the Petitioner's Memorandum nor the record manifests an abuse of judicial discretion.

Furthermore, that even if the said propositions of law be error, which we specifically deny, said errors are not prejudicial error, but rather harmless error and hence the Petitioner was accorded a fair trial.

CONCLUSION.

The State of Ohio submits that the Petitioner, Stanley Karl Thomas, was accorded a fair trial in accordance with the Constitutions of the United States and State of Ohio. That pursuant to said fair trial, the Petitioner was found Guilty of Second Degree Murder by a panel of three (3) Judges.

We submit that no error occurred during the proceedings of this trial, and most assuredly, if any error was committed, which we expressly deny, it was harmless error.

We further submit that Petitioner has not alleged errors which represent substantial constitutional questions of law.

Having been afforded a fair trial, we submit that the Verdict of the three-judge panel be affirmed and certiorari be in this case denied.

Respectfully submitted,

JOSEPH R. GRUNDA,
Prosecuting Attorney,
Lorain County, Ohio,
252 Second Street,
Elyria, Ohio 44035,
Attorney for Respondent,
State of Ohio.

APPENDIX A.

ORDERS OF THE SUPREME COURT OF THE STATE OF OHIO.

(Entered September 15, 1971.)

No. 71-335.

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO, CITY OF COLUMBUS.

STATE OF OHIO,
Appellee,
vs.
STANLEY KARL THOMAS,
Appellant.

ORDER DISMISSING APPEAL.

This cause, here on appeal as of right from the Court of Appeals for Lorain County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Lorain County for entry.

ORDER OVERRULING MOTION FOR LEAVE TO APPEAL.

It is ordered by the Court that this Motion is overruled.

APPENDIX B.

OPINION OF THE COURT OF APPEALS.

(Decided January 20, 1971.)

Case No. 1911.

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT OF OHIO
COUNTY OF LORAIN

STATE OF OHIO,
Plaintiff-Appellee,

vs.

STANLEY KARL THOMAS,
Defendant-Appellant.

An appeal on questions of law has been lodged in this Court from a judgment of guilty of murder in the second degree, entered by a panel of three judges sitting to determine the facts in place of a jury. The jury was duly waived, in writing, by the Defendant (appellant).

It is the claim of Stanley Karl Thomas that:

1. "The Court erred in refusing to admit testimony as to the character of the decedent.

2. "The trial court committed error by applying the rule set forth in Clark v. State, 12 O. 483 (commonly referred to as the M'Naghten Rule) in determining the question of legal sanity.

3. "The facts and circumstances surrounding the death of Terry Lee White are reasonably reconcilable on a theory other than murder, thus inconsistent with the verdict as rendered.

4. "The conduct of the trial court and/or the chief Judge, Paul J. Mikus, before and during trial was improper and violated the defendant's constitutional rights to a fair trial.

5. "The court erred in failing to grant the motions of the defendant at the conclusion of the state's case.

6. "The verdict was against the manifest weight of the evidence."

The record herein shows a very typical situation in a case of this nature. While it is true that there is a great conflict in testimony, there is no question but that Terry White met his death at the hands of Stanley Karl Thomas. That death was caused by numerous stab wounds inflicted upon White by Thomas on the grounds of a place in Elyria, Lorain County, Ohio, known as Neighborhood Center. Thomas, White and others, had attended a football game on the night of October 31, 1969. Both White and Thomas were very young married men. Thomas had lost his vision in the left eye, but otherwise he was in good health; he was six feet tall and weighed 170 pounds. Conflict arose between the parties because of a statement that the wife of Thomas had gone out with White. At the Neighborhood Center, after the football game, Thomas, who had borrowed a knife from a friend that night, approached White. A fight ensued; whether White struck Thomas with a whiskey bottle before Thomas struck White in the thigh, or whether it was "simultaneous," as one witness said, was a matter for the trier of the facts to conclude. Many stab wounds, with the result of death did occur. From this evidence, the trier of the facts could rightly conclude that Thomas was the aggressor.

We believe, from a reading of this record, that the case was well tried by the court and the lawyers. In reading typewritten testimony, it is impossible to get the inflection of voices, stresses of syllables and enunciation of words. We find no prejudice evidenced against anyone or by anyone in this record.

There was comment from the court, during an interruption of the argument by Mr. Zagrans, that indicated an unfamiliarity with the clarification of the Ohio rule on insanity as a defense, set out in the case of *State v. Staten*, 18 Ohio St. 2d 13, but the trial court then indicated that it would have the testimony transcribed for the purpose of considering that testimony in the light of the rule, as clarified. We are certain that the Court considered the testimony of Doctor Corzo, who, at page 360 of the record, indicated that the defendant would "most likely not"—"have the ability to refrain from performing these acts" (stabbing).

We have, with care, examined the record in the light of the several claims of error, and find none prejudicial to the substantial rights of the defendant (appellant). The judgment must be affirmed.

Judgment affirmed.

APPENDIX C.

JOURNAL ENTRY OF THE COURT OF APPEALS.

Case No. 1911.

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT OF OHIO
COUNTY OF LORAIN

STATE OF OHIO,
Plaintiff-Appellee,

vs.

STANLEY KARL THOMAS,
Defendant-Appellant.

This cause came on to be heard on appeal on questions of law by the said Stanley Karl Thomas, Appellant herein, the original papers or transcripts thereof, and a duly certified Transcript of the Docket and Journal Entries of the Court of Common Pleas of Lorain County, Ohio, filed therewith in the said case, wherein the State of Ohio was Plaintiff and Stanley Karl Thomas was Defendant, and was argued by counsel, and submitted to the Court.

Upon consideration whereof the Court finds that in the record and proceedings aforesaid there is no error prejudicial to appellant manifest upon the face of the Record of said Court of Common Pleas, and the judgment of said Court of Common Pleas is affirmed.

It is ordered that the said Appellant pay the costs of this Proceeding taxed at $, and in default thereof that execution issue therefor.

The Court finds there was reasonable cause for this appeal.

It is further ordered that a Special Mandate issue out of this Court directing the Court of Common Pleas of Lorain County, Ohio, to carry this Judgment and order for costs into execution.

APPENDIX D.

OPINION OF THE COURT OF COMMON PLEAS.

Case No. 15050.

IN THE COURT OF COMMON PLEAS

STATE OF OHIO, LORAIN COUNTY, SS.

STATE OF OHIO,
Plaintiff,

vs.

STANLEY KARL THOMAS,
Defendant.

This day again came the Prosecuting Attorney on behalf of the State of Ohio and the Defendant, Stanley Karl Thomas, in his own proper person being in open Court with his counsel, and the trial proceeded. The panel of three judges resumed deliberation after retiring to their room.

Afterwards came said judges into open Court with their Verdict in writing signed by each Judge, concurring and dissenting and saying:

We, the undersigned Trial Judges, find the Defendant, Stanley Karl Thomas, not guilty of Murder in the First Degree, as he stands charged in the indictment, but find the Defendant guilty of the included offense of Second

Degree Murder, in violation of Section 2901.05 of the Ohio Revised Code of Ohio.

Thereupon the Defendant being inquired of if he hath anything to say why judgment should not be pronounced against him, and showing no good and sufficient cause why judgment should not be pronounced, it is the JUDGMENT OF THE LAW AND THE SENTENCE OF THE COURT that the Defendant, Stanley Karl Thomas, be, and he hereby is, sentenced to be again taken into the Jail of Lorain County, Elyria, Ohio; thence within five (5) days to the Penitentiary of the State of Ohio, Columbus, Ohio, there to serve a life imprisonment according to law for violation of ORC 2901.05, and to pay the costs of this prosecution for which execution is awarded.